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February 2, 2004

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Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

### Re: **Ex Parte Notice**

International Settlements Policy Reform, International Settlement Rates  
(IB Docket Nos. 02-324, 96-261)

Dear Ms. Dortch:

On January 30, 2004, Robert A. Calaff, Senior Corporate Counsel, Governmental and Industry Affairs, Lloyd Tjom, Senior Manager, Revenue Assurance (by telephone), Jennifer L. Kostyu and the undersigned, of Morrison & Foerster LLP, all representing T-Mobile USA, Inc. ("T-Mobile"), met with Anna Marie Gomez, James L. Ball, and David Strickland of the International Bureau to discuss the above-referenced dockets. T-Mobile noted that the record does not support the need for unilateral Commission intervention in the oversight of foreign mobile termination rates and urged the Commission to allow the market and foreign regulators adequate time to address this issue. The attached discussion points also were distributed to Commission staff.

Pursuant to section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed.

Very truly yours,

/s/ Cheryl A. Tritt

Cheryl A. Tritt  
Counsel to T-Mobile USA, Inc.

cc: Anna Marie Gomez  
James L. Ball  
David Strickland

## **T-MOBILE USA, INC. DISCUSSION POINTS FOREIGN MOBILE TERMINATION RATES**

- The record does not support the need for unilateral Commission intervention in the oversight of international wireless termination rates. Multiple parties demonstrated that regulatory action is not necessary at this time, including BellSouth, NTT DoCoMo, Vodafone, various foreign regulators, and others (some of which also provided economic data demonstrating falling foreign mobile termination rates).
- AT&T, COMPTTEL, Sprint and MCI have presented no evidence that the application of benchmark rates would lower foreign mobile termination charges. Furthermore, any unilateral action by the Commission could raise barriers to entering foreign mobile markets (including entry by U.S. carriers), impact foreign mobile penetration rates, and reduce investment in foreign mobile networks.
- Foreign regulators have been addressing, and will continue to address, foreign mobile termination charges. The record is replete with descriptions of foreign regulators' efforts to address mobile termination rates, including the United Kingdom, Australia, and much of Western Europe. Subject to state regulation, mobile termination rates in the United Kingdom are decreasing 14-15% each year through 2006. Mobile operators in the Netherlands are expected to lower their termination rates by 40-50%. In Japan, mobile termination rates were reduced by 12% in 2001 and 5.5% in 2002. Such rates also have been reduced to 0.1494 and 0.1495 euros per minute in France and Italy respectively. Vodafone also has noted that on average mobile termination rates in Europe are declining by 10% each year. The regulators share with the Commission the incentive to investigate and attend to such charges because their constituents also pay mobile termination fees. Importantly, foreign regulators, unlike the Commission, have direct authority over carriers operating in their countries and are already taking steps to lower mobile termination rates. Market forces also are acting to reduce termination charges in many foreign countries.
- To make any informed decision regarding the regulation of foreign mobile termination rates, the Commission would need to obtain and examine extensive information about local conditions in foreign markets. The Commission also is limited jurisdictionally in its ability to collect this information and affect international wireless termination rates. The most effective response would be to allow the market and foreign regulators adequate time to address this issue.
- T-Mobile, as a subsidiary of a Deutsche Telekom AG ("DT"), has a unique perspective on the complex nature of termination rates under Calling Party Pays ("CPP") and Receiving Party Pays ("RPP") payment regimes.
  - The foreign mobile termination charges incurred by U.S. consumers are a consequence of different international customer payment regimes. The payment regime simply determines which party will pay to terminate a call to a wireless telephone. Under a CPP regime a mobile operator collects termination charges from the caller's network, which in turn collects the charges from the caller. Under a RPP

regime, the mobile operator collects termination charges from the caller's fixed network *and* the from the mobile subscriber.

- It is artificial to extract a single rate element from one payment regime, such as the termination rate, and compare it to a similar rate element in a different payment regime. Such an approach ignores numerous other factors that affect pricing under each payment regime, and would be as arbitrary as comparing retail rates for mobile service paid by consumers in foreign countries to those paid by U.S. consumers (which are frequently higher as a result of the U.S. RPP regime).
- The Office of the United States Trade Representative also is reviewing foreign countries' compliance with the World Trade Organization Basic Telecommunications Agreement and Reference Paper as part of its Section 1377 process. DT commented in that proceeding and noted that the mobile telecommunications market in Germany is extremely competitive, terminating mobile rates in Germany and other European countries have been steadily decreasing due to market forces and regulatory action, and the German regulator has both the authority and competence to address mobile termination rates.
- Carriers are best suited to determine how to inform customers about rates generally and international rates specifically. Adopting rules requiring carriers to standardize their customer education efforts risks creating more, not less, customer confusion about foreign mobile termination charges.
  - For example, T-Mobile specifically offers a flat-rate pricing plan pursuant to which customers pay the same rate to call a foreign country regardless of whether the call terminates on a wireline or wireless network. This plan has been very well-received by customers and greatly minimizes customer confusion. T-Mobile has included information in customers' bills and on its website regarding its flat rate international pricing plan and explained that customers under the plan pay one consistent rate when calling abroad, with no hidden toll charges.
- If subscribers are dissatisfied by a carrier's imposition of foreign mobile termination surcharges or failure to address or notify them about such charges, the subscriber can look to another more responsive carrier for service. Subscribers also will look to other carriers that can offer the lowest rates. Accordingly, U.S. facilities-based wireline and wireless carriers have incentives to seek out low termination rates, including those for mobile calls.